

ALBERT BARNES ON THE MAINE LIQUOR LAW.

THE

THRONE OF INIQUITY;

OR

SUSTAINING EVIL BY LAW:

DISCOURSE IN BEHALF OF A LAW PROHIBITING
THE TRAFFIC IN INTOXICATING DRINKS.

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ALBERT BARNES

ON THE

MAINE LIQUOR LAW.

"Shall the throne of iniquity have fellowship with thee, which frameth mischief by a law?"

PSALM XCIV. 20.

A "THRONE of iniquity," is a throne or government that is founded on iniquity, or that sustains iniquity: Such a throne or government "frames mischief *by a law*," when by its laws it protects and patronizes that which is evil, or when those who practise evil may plead that what they do is legal, and may take refuge under the laws of the land. Such a throne or government, the Psalmist says, can have no fellowship with God. His throne is a throne of righteousness. He makes no law to protect or to regulate evil. His laws, in relation to all that is wrong, only prohibit and condemn. They who practise iniquity in any form, can never take refuge under his statutes; can never claim that what they do is *legal* under his administration; can never plead the patronage of his government; can never appeal to the sanction of his laws against those moral influences which may be employed to induce them to abandon their course of life, or the business in which they are engaged.

A law framed to *protect* evil, is a method of framing mischief by a law. A law which assumes that a thing is wrong, and yet tolerates it; which attempts only to check and regulate it, without utterly prohibiting it; which aims to derive a revenue from it for the purposes of government; which makes that which is morally wrong, *legal*, is one of those things in human affairs with which the throne of God can have no fellowship. A law, for instance, which should assume that *lotteries* are evil, and are of pernicious tendency in a community, and which should nevertheless authorize them, and seek to derive a revenue from them, though under any restrictions, would be such a form of "framing mischief by law" as could have no "fellowship" with the "throne of God." The same would be true of gaming establishments; and the same must be true of all acknowledged forms of iniquity.

An evil always becomes *worse* by being sustained by the laws of the land. It is much to have the sanction of law, and the moral force of law, in favor of any course of human conduct. In the estimation of many persons, to make a thing *legal* is to make it morally *right*, and an employment which is legal is pursued by them with few rebukes of conscience, and with little disturbance from any reference to a higher than human authority. Moreover, this fact does much to deter others from opposing the evil, and from endeavoring to turn the public indignation against it. It is an unwelcome thing for a good man ever to set himself against the laws of the land, and to denounce that as *wrong* which they affirm to be *right*. It is a virtue to be law-loving, and law-abiding; and it is a principle which every good citizen cherishes to do what he can to give additional force to the authority of law, and not to lend the sanction of his name to that which would weaken its moral power. Hence such men are often slow and

reluctant in attacking that which is an undoubted evil, for the attack seems to be made upon the legal fabric as such, and to do just so much to weaken the authority of law. The good are deterred from opposing it, for they do not wish to seem to be arrayed against the laws. The bad are confirmed in their course, for they feel that they are sustained by the laws of the land, and for them that is enough. They can claim, too, some popular sympathy when they are denounced for doing that which is *legal*. They can pursue their course in spite of all that others can do. Thus the evil grows in strength by all the boldness given to them by the sanction of the laws, and by all the reluctance of the friends of reform to denounce that as *wrong* which the law affirms to be *right*.

The same thing is true, when there is an attempt, not directly to *sustain* and *countenance* the evil as such, but to *regulate* it. God never does this in his government; for his law lends no sanction to that which is wrong, does nothing to regulate it, has no provisions for deriving a benefit from it. It prohibits and condemns; and that is all. But much is done to countenance evil when the law seeks to regulate it; to check it but not to remove it; to tax it; to derive a revenue from it; and to make supplemental provisions for the mischiefs which grow up under its own enactments.

The laws in relation to the traffic in intoxicating drinks in this country, have been, in the main, enacted on the principles just alluded to. The traffic has been admitted to be so full of peril that it needed to be checked and regulated, and the laws have been made on the supposition that it could not be thrown open indiscriminately to all classes of citizens. Hence it has been supposed that a special permission or "*license*" was necessary in order to guard the traffic, and that not a license, as in the case of dry goods and tin-ware, on the sole ground of raising a

revenue, but on the ground that it was dangerous, and that, therefore, it should be entrusted only to those in whom the community could confide, with the additional idea that the State had a right to raise a revenue from it, as a compensation for the protection extended to it. In our country it has never been assumed to be safe and proper that the business should be thrown open to any and all who might choose to engage in it, as any persons who choose, and as many as choose, may engage in the business of farming, or gardening; of making hats, or shoes, or coffins; of building houses, or manufacturing ploughs or wagons. It is assumed in the laws that it is to be a *regulated evil*; and the object is not to prohibit it, but first to keep it within certain bounds, and then to provide for the evils which grow out of it, by taxing the virtuous and industrious to bear the expenses of the crime and pauperism which it was anticipated would be produced in spite of all the precautions of the State. There was once such legislation about lotteries; there has been such, in some countries, about licentiousness; but, with some few exceptions, it is believed there is no such legislation on any other subject now in the world.

The time has come when it is proper to enquire whether this is the true principle in this subject; whether a great and acknowledged evil can ever be suppressed in this way; or, whether the traffic should be wholly prohibited by law, accompanied with suitable penalties. The evils of intemperance are in all respects so great, and are, in spite of all the legal enactments now existing, so far spread and spreading in the land; the loss to the nation in its moral character, and in its productive industry, is so great; the costs of prosecuting for crime committed under the influence of intoxicating drinks, and the taxes to support paupers made by intemperance, are so great; the failure of the appeals made by argument and moral suasion are,

n painful respects, so manifest ; the woes and lamentations caused by intemperance come up still so loud and so piercing from all parts of the land ; the ruin of the body and the soul of a human being is so dreadful ; and the fact that tens of thousands of our countrymen are annually sent to a dishonored grave as the result of the "drinking usages of society"—these things are forcing the enquiry upon the public mind, whether it is, or is not, proper and practicable to prohibit the traffic altogether, and whether this is not the point which legislation must reach, and should reach, in regard to this great evil.

We, who are assembled here, constitute a part of the community, who, through our representatives, make and administer the laws of the land. Those laws will be always in our country merely the exponent of public opinion, and the nature of the public opinion will find an expression in the laws. With a view, therefore, to the formation of a correct public opinion as far as my voice may have any influence, and ultimately to a change in the whole course of legislation on this subject in our Commonwealth and country, and imitating the example of that great man who "reasoned" on *temperance*, as well as on "righteousness and judgment to come"—the one closely connected with the others (Acts xxiv. 25), I propose to submit to you a few considerations on the propriety of a law, prohibiting entirely, with suitable penalties, the traffic in intoxicating liquors as a beverage. For so important a proposed change in legislation, a change affecting the business of so large a part of the community, and so much invested capital, and reversing the maxims so long regarded as settled on the subject of legislation, it is proper that reasons should be submitted to an intelligent public. Such a change is not to be produced by mere excitement ; still less by denunciation. Such a law as is proposed cannot be obtained without approving itself

to a reflecting community ; such a law, if obtained, could not be enforced unless it should commend itself to such a community as founded on just principles of legislation. I propose, therefore, first, to lay down a few principles in reference to legislation as bearing upon public evils, and then to enquire into their application to this particular case.

We have not now the point to argue that it is right and proper to legislate in regard to this traffic. That point is acted on by all the legislatures in the land, and is acquiesced in by the people. It is assumed in all the laws which pertain to the importation of spirituous liquor ; by all the statutes which relate to "licensing" public houses to sell it ; by all the enactments in the several States to regulate the sale.

We have not now the point to argue that it is right to make laws, in certain cases, *prohibiting* the sale. The laws now assume that it is right to *prohibit* the sale by large classes of the citizens, for the laws entrust the sale to a selected few, and restrain all others.

We have not now the point to argue that such a law as is proposed, amounting to an entire prohibition, would be, in any one of the States, conformable to the constitution of the United States, for this point has been settled by the highest judicial authority in the land. In the celebrated "License cases," involving the constitutionality of laws passed by the States of Massachusetts, Rhode Island, and New Hampshire, "for discouraging the use of ardent spirits, by prohibiting their sale in small quantities, and without licenses previously granted by the State authorities," the constitutionality of those laws was affirmed, and the following opinions were expressed by the Justices on the general subject. See 5 Howard's Reports of Cases argued and adjudged in the Supreme Court of the United States, p. 504-633.

Chief Justice Taney said:—"If any State deems the retail and internal traffic in ardent spirits injurious to its citizens, and calculated to produce idleness, vice, and debauchery, I see nothing in the Constitution of the United States to prevent it from regulating or restraining the traffic, or *from prohibiting it altogether*, if it think proper."—5 Howard, 577.

Mr. Justice McLean said.—"A license to sell an article, foreign or domestic, as a merchant, or inn-keeper, or victualler, is a matter of police and revenue, *within the power of the State*."—5 Howard, 589. And again: "It is the settled construction of every regulation of commerce, that under the sanction of its general laws, no person can introduce into a community malignant diseases, or any thing which contaminates its morals, or endangers its safety."—*Ibid.* "If the foreign article be injurious to the health and morals of the community, a State may, in the exercise of that great and comprehensive police power which lies at the foundation of its prosperity, *prohibit the sale of it*."—*Ibid.* 592. "No one can claim a license to retail spirits as a matter of right."—*Ibid.* 597.

Mr. Justice Catron said: "If the State has the power of restraint by licenses to any extent, she has the discretionary power to judge of its limits, and may go to the length of prohibiting sales altogether."—5 Howard, 611.

Mr. Justice Daniel said of imports that are cleared of all control of the government which permits their introduction,—“They are like all other property of the citizen, and should be equally the subjects of domestic regulation and taxation, whether owned by an importer or his vender, or may have been purchased by cargo, package, bale, piece, or yard, or by hogsheads, casks, or bottles.”—5 Howard, 614. In answering the argument that the importer purchases the right to sell when he pays duties to the government, Mr. Daniel continues to say, “No such right

as the one supposed is purchased by the importer, and no injury, in any accurate sense, is inflicted on him by denying to him the power demanded. He has not purchased, and cannot purchase from the government that which could not ensure to him, *a sale independently of the laws and policy of the States.*”—*Ibid.* 616.

Mr. Justice Woodbury said: “After articles have come within the territorial limits of States, whether on land or water, the destruction itself of what constitutes disease and death, and the longer continuance of such articles within their limits, or the terms and conditions of their continuance, when conflicting with their legitimate police, or with their power over internal commerce, or with their right of taxation over all persons and property within their jurisdiction, seems one of the first principles of State sovereignty and indispensable to public safety.”—5 Howard, 630

Mr. Justice Grier said: “It is not necessary to array the appalling statistics of misery, pauperism, and crime, which have their origin in the use and abuse of ardent spirits. The police power, which is exclusively in the State, is alone competent to the correction of these great evils, and *all measures of restraint or prohibition necessary to effect that purpose, are within the scope of that authority.* There is no conflict of power, or of legislation, as between the States and the United States; each is acting within its sphere, and for the public good, and if a loss of revenue should accrue to the United States from a diminished consumption of ardent spirits, *she will be a gainer a thousand fold in the health, wealth, and happiness of the people.*”—5 Howard, 632. These opinions put beyond question the constitutionality of the law which is asked for.

What is asked for, therefore, in this case, is not that there *should be* legislation on the subject, but that the legislation should be *right*. The principle now assumed in the legislation on the subject is, that an acknowledged evil

which, if left to itself would only spread wo and ruin through a community, is to be *tolerated* and *regulated*; that business always dangerous to the health and morals, and souls of men, is to be restrained, but not *forbidden*. We ask *that it should be prohibited altogether*.

The principles in legislation to which I referred as bearing on public evils, are five in number.

1. First, society had a right *to protect itself*. I do not now that this would be called in question, for it is universally acted on; but the importance of the principle itself, and its connection with the point before us, demands that it should be well understood, and that its bearings should be clearly seen. It is important to understand that there is such a right in fact, and to see clearly to what it extends.

(a) In regard to the fact, it may be remarked, that it is inherent in the nature of a right that there should be the prerogative of self-protection, or self-defence, and that all societies, and all individuals, act on it.

God has a right to protect his own government, not to say himself, and is constantly doing it by all his prohibitions of certain courses of conduct; by all the penalties affixed to his laws; by all the punishments which he brings on transgressors; by all that he does to overthrow and crush the enemies of himself and of his kingdom.

Man as an individual, or as the head of a family, has a right to protect himself or his family, by all the wisdom which he has; by all the strength, properly employed, which he possesses; by all the aid which he can secure from the magistrate under the operation of law; and by all his appeals to the God of truth and justice. There are arrangements every where to secure him in the protection of his rights, and he does no wrong if he avails himself of these to defend those rights against all who would invade them.

Society has a right to protect itself. The right is inherent in the organization. It is always acted on. If it

were not so, the attempt to organize civil society would be a farce. In all civil society it is *assumed* that this is so. Hence the enactment of laws; the affixing of penalties to laws; the institution of courts; the establishment of a police force; the infliction of fines and imprisonment; the cutting off of those who are dangerous, by capital punishment; the employment of a military force to suppress riot and rebellion: the resisting of foreign invaders, and the suppression of treason. All these proceed on the principle that society has a right to protect itself so as to secure the ends of the organization.

But to what does the right extend? Clearly to every thing where injury or wrong would be done. In God's government it extends to every thing where his honor or his law is involved; in the case of man as an individual, or as the head of a family, to every thing where he or his family have *rights* which are invaded by others; in regard to society, to every thing which pertains to the public, and which affects the public good. "Let a man," says Blackstone, "be ever so abandoned in his principles, or vicious in his practice, provided he keeps his wickedness to himself, and does not offend against the rules of public decency, he is out of the reach of human laws. But if he makes his vices public, though they be such as seem principally to affect himself, (as drunkenness or the like) they then become, by the bad example they set, of pernicious effects to society; and therefore it is then the business of human laws to correct them." 1, 124.

As this principle is interpreted by society, it extends to every thing which would affect good order, its safety, its prosperity, its existence:—a protection of society extended *in behalf* of all that would promote its welfare; a protection against all that would injure, endanger, or destroy it. It is a protection extended to the peaceful pursuits of industry; to the person and reputation of indivi-

als; all that contributes to good morals and order; to the rights of conscience; to life, liberty, and the pursuit of happiness:—it is a protection of the community *against* all which would invade it by force and arms; against all which would corrupt or weaken it; against all which would undermine the public morals; against all vices, as Blackstone specifies, which are of a public nature, and which tend by example to be of pernicious effects in society.

On these principles of self-protection, society legislates against lotteries, against gaming, against counterfeiting the public coin, against drunkenness, against profaneness, against poisonous or corrupted drugs, against any employment that in its nature tends to endanger the public health, peace, or morals. No man, on this principle, is allowed to set up and prosecute a public business, however lucrative it may be, which will have either of these effects—for the public good is of more consequence than any private gain could be. If, for instance, a man should set up a *bakery* in this city, in which by the infusion of a deleterious drug into his bread he would endanger the public health, society would not hesitate a moment in regarding this as a proper subject of legislation, and would never dream of tolerating it, or taxing it, or regulating it, or licensing it. If from the bakeries of this city, bread of such a character should go forth for a single morning, and there was a general concert and understanding among the bakers to continue this practice as the regular line of their business—if there was not *law* enough in the community to put a stop to it, there would not be *patience* and *forbearance* enough to prevent a storm of public indignation that would in a day lay every such bakery in ruins.—There are not as many bakeries in this city, as there are houses for selling intoxicating liquors.

2. I lay it down as a second principle in regard to legislation, that society should not by its laws *protect evil*. This perhaps is sufficiently clear from the remarks already

made, but the importance of the principle in itself, and in the application which I intend to make of it, requires that it should be made a little more distinct and prominent. The position is, that the purpose of society in organizing a government, and the purpose of a government under such an organization, should not be to *protect evil in any form*. The law is made "for the lawless and disobedient; for the ungodly and for sinners, for unholy and profane, for murderers of fathers and murderers of mothers, for manslayers, for whoremongers, for those that defile themselves with mankind, for men stealers, for liars, and for perjured persons," (1 Tim. i. 9,) and not to *protect* those who practise these vices, or to *protect* any thing which will give facility in practising them. The true object of legislation, is to *prevent* not to *protect* evil. God never instituted a government on the earth with a view to its throwing a protecting shield over vice and immorality; he has never commissioned men to sit in high places to accomplish any such work. The end of government, so far as it bears on that point at all, is to suppress crime; to punish wrong-doers; to remove iniquity; to promote that which is just and true. And it matters not what the evil is, nor how lucrative it may be made, nor how much capital may be invested in it, nor how much revenue may be derived from it, nor how many persons may have an interest in its continuance,—the business of the lawgiver is to suppress it, not to protect it, to bring it to as speedy an end as possible, not to become the panderer to it, or the patron of it. What would be thought of a government that should, under any pretext whatever, take under its protecting care, thieves, counterfeiters and burglars?

3. A third principle in regard to legislation, is equally clear, and equally important. It is, that society should not undertake to *regulate evil by law*. Its business is to *remove it*; not to *regulate* it. This principle, also, would

seem to be plain enough on its very announcement, but it bears so directly on the point before us that it is proper to dwell on it a moment longer. What would a government be that should undertake to regulate murder, arson, adultery, burglary, or theft? What would laws be that should "license" such crimes in any circumstances, and under any restrictions?—What would a law be that should undertake to derive a revenue from the act of poisoning innocent children under suitable restraints and safe-guards, or that should authorize the burning of a house or barn by night under proper checks, and with suitable security in regard to the good moral character of him who did it?

I admit that there have been times and countries in which the principle against which I am now speaking, has been regarded as a proper principle in legislation. Theft was tolerated and encouraged in Sparta when properly regulated; in France, at one time, it was regarded as proper that licentiousness should be taken under the protection of law, and should be licensed and regulated; and so gaming has been licensed and regulated; and so lotteries have been, and so horse-racing has been, and so bull-baiting, and cock-fighting, and brutal contests between man and man have been. You may find countries, I admit, where these things are still done; but the progress of the world is towards that point which I have laid down as a principle in all just legislation—that the object of law is not to *regulate* but to *remove* evil. We have applied this principle to lotteries, to horse-racing, and to gaming. We have applied it to the crimes of arson, theft, murder, treason, duelling, adultery, and polygamy. We have practically applied it to the barbarous sports of the amphitheatre, to bull-baiting, and to open and disgraceful contests between man and man. But we have *not* applied it to all things. There is one great evil that still lingers among us, where the principle is adopted and acted

on, that it is to be regulated and not removed ; that it is to be placed under suitable restraints, and made subservient to the purposes of government, by raising a revenue. This stands by itself, perhaps the solitary instance of this kind of legislation in our land. In all other cases the grand principle is adopted and acted on that no temporary benefit—no profitable investment of capital—no purpose of raising a revenue—would justify a legislative body in tolerating an evil, and regulating it by law. The doctrine which I am defending is, that this principle should be adopted in regard to *all* that is evil ; that the great purpose of government is to remove it, not to patronize and regulate it.

4. I state as a fourth principle in regard to legislation, that society has a right to take efficient means to prevent or remove an evil. As an illustration of this, and as bearing on the point before us, I refer to what comes under the denomination of a *nuisance*. I intend to use the word nuisance not only in its proper *legal* signification, but in a large sense as extending to public morals, as well as to public comfort and convenience.

The propriety of this principle is so well settled in regard to what is properly and legally called a *nuisance*, that it is needless to attempt to argue here. A “nuisance is that which annoys or gives trouble and vexation ; that which is offensive or noxious. A *liar* is a nuisance to society.” *Webster’s Dic.* It is a settled principle that a man may himself remove a private nuisance (3 Blackstone, 5) provided he causes no riot by it ; a public nuisance is to be removed by proper process of law. What I am now saying is, that society has a right to make provision by law for the prevention or removal of all that can properly come under this name—no matter who is affected, or how much property is rendered worthless.

Nuisances or evils that individuals or society have a right to protect themselves against, are such things, as defined in

the law-books, as the following :—a man's building his house so near to mine that his roof overhangs my roof; erecting a house or other building so near to mine that it obstructs my ancient lights and windows: keeping noisome animals so near to the house of another that the stench of them incommodes him, and makes the air unwholesome; a setting up and exercising an offensive trade—as a tanner's or a tallow chandler's; erecting a smelting house for lead so near to the land of another that the vapor and smoke kills his corn and grass, and damages his cattle. And so to stop or divert water that uses to run to another's meadow or mill, or to corrupt or poison a water course, by erecting a dye-house or lime pit for the use of trade in the upper part of the stream, is a nuisance which society has a right to abate. 3. Blackstone, 217, 218. "So clearly," says the great author of the Commentaries on the laws of England, "does the law of England enforce that excellent rule of Gospel morality, of doing to others, as we would they should do unto ourselves." And so the same great writer, in another place, says, "all disorderly inns, or ale-houses, bawdy-houses, gaming-houses, stage-plays unlicensed, booths and stages for rope-dancers, mountebanks and the like, are public nuisances." 4. Blacks. 167. So lotteries have often been declared public nuisances, and have been suppressed by law as such; and so the selling of fire-works and squibs, or throwing them about in the street, is a nuisance. 4. Blacks. 168. On these principles, our own Commentator on American law, says:—"The government may by general regulations, interdict such uses of property as would create nuisances, and become dangerous to the lives, or health, or peace or comfort of the citizens. Unwholesome trades, slaughter-houses, operations offensive to the senses, the deposit of powder, the building with combustible materials, and the burial of the dead, may be interdicted by law, in the midst of dense masses of population,

on the general and rational principle, that every person ought so to use his property as not to injure his neighbors, and that private interest must be made subservient to the general interest of the community. 2. Kent, 340.

These then are nuisances that may be abated ; these are uses of property that may be interdicted by law for the sake of the public health, peace, comfort. Private interest is to be sacrificed to the public good, and society is to take care that property shall not be so used as to be detrimental to the public happiness. This principle is of broad application in a community, and society acquiesces in it as just and equal. Law is not to protect any man who so uses his own property as to invade the rights, endanger the health, destroy the comfort, or peril the welfare of his neighbor or of society at large.

There are *moral* nuisances as well as *physical* ; nuisances affecting the peace, the good order, the domestic virtues of a community, and all so much the worse, and so much the more dangerous, as the peace, the good order, the domestic virtues of a community are of more importance than its physical comforts ; and if the one may be abated or removed, by so much the more may the other. A man has no more right to employ his property so that in all probability, and as the regular result of his business, it will destroy domestic comfort, reduce his neighbor to beggary, and bring upon him disease and death, or scatter discord and woe through a community, than he has to set up a tannery or a tallow chandlery in a neighborhood, or to obstruct my "ancient lights and windows ;" and if society may extend its vigilance over the one, it may over the other.

The property that does the most mischief, either under the protection of law, or without the protection of law, that does the most to increase the public burdens by making paupers and by multiplying crimes ; that causes most

estates to melt away, and that most diminishes the productive industry of the nation by indisposing or disabling men from labor; that produces the most wretched forms of bodily and mental suffering; that consigns most persons to the grave and to perdition, is that which is employed in the manufacture and sale of intoxicating drinks. All the property employed by tallow chandlers and tanners, and the makers or sellers of squibs, and by dyers, or in any other forms of nuisance, or that would be employed if there were no laws to prohibit it, and all the injury done to the prosperity or happiness of a community by employing property in such operations, is a nameless trifle compared with the evil done by the manufacture and sale of intoxicating drinks. It would be impossible to induce men by any protection which the law could give, to employ property so as to do as *much* mischief in any other way.

5. A fifth principle in regard to legislation is, that society has a right to prevent or remove an evil, by destroying private property, or rendering it *valueless*, if necessary.

This principle is recognized in a case where other property, or where life may be endangered, as in blowing up a house to stop the progress of a conflagration. It is recognized in the confiscation of goods in a contraband traffic. It is recognized in the case of damaged hides or corrupted drugs, or tainted meat in the market, or the tools and implements of counterfeiters. "The acknowledged police power of a State," says Mr. Justice McLean, (5 Howard's Reports, 589) "extends often to the destruction of property. A nuisance may be abated. Every thing prejudicial to the health or morals of a city may be removed. Merchandise from a port where a contagious disease prevails, being liable to communicate disease, may be excluded; and in extreme cases it may be thrown into the sea."

The object in these last cases is to *put the property out*

of the way; to prevent its doing evil; to dispose of it in such a *manner* that it shall not corrupt the health and the morals of a community. The right to destroy such property is a right inherent in society, and the owner of damaged hides, or corrupted drugs, or the dies and stamps used in counterfeiting the coin, can have no right to complain, even if his property is rendered worthless, or is destroyed. And if the seller of corrupted drugs, or the owner of the dies and stamps of the counterfeiters *should* complain, and should assert that he had the right to use his property as he pleased, or if the owner of tainted meat in the market should assert that society had no right to dispose of his property, there would be but one voice and one feeling in an indignant and outraged community on account of a claim so monstrous. Moreover, if, instead of destroying such property, or in some other way putting it beyond the power of doing evil, any municipal body should authorize the business, though under certain restrictions, and should attempt to derive a revenue from it at the expense of the life and health of large numbers of its citizens, it would be an outrage on all legislation, and would excite the scorn and the abhorrence of the whole civilized world. Yet there is no property that so certainly and so uniformly works evil in a community as that which is employed in the manufacture and sale of intoxicating drinks; and all the capital on the face of the earth invested in damaged hides, and corrupted drugs, and tainted butcher's meat, and counterfeiter's tools, is not doing an appreciable quantity of the mischief that is done by the property that is invested in this business.

These principles seem plain, and are such as are acted on in the ordinary course of legislation. Society could not exist, if they, all of them, or any one of them, were denied; and, in ordinary matters, we all feel that in a case covered by

these principles, we have a right to appeal to the interposition of the legislative power.

It remains, then, only to inquire whether they have a proper applicability to the immediate matter before us—the evils, the woes, the wrongs, the desolations of intemperance. And in reference to this there are two inquiries.—(a) Why should we invoke the aid of legislation at all? and (b) Why, if legislation is necessary and proper, should the principles which have been laid down, lead to an entire prohibition of the traffic?

(a) The first of these inquiries is, why should we invoke the aid of legislation at all? That is, in other words, why should we not leave this, as we do other points of morals, and as we do religion; to the influence of argument and moral suasion, to the reason, the conscience, and the interest of mankind? This inquiry can be soon answered. I admit that argument and moral suasion; that appeals to the reason, the conscience, the self-interest of men; appeals founded on the injury that intemperance does to individuals and to the community—to the bodies and the souls of men; appeals founded on the due regard to health, to happiness, and to salvation, *should* be plied on every hand; and I admit that much may be done by this, as there has been heretofore done, to stay the progress of this great evil in our land. I admit that in reference to large numbers of our fellow citizens, it has been, and it will be, all that is needed. But I wish to show you, in few words, why this is not *all* that is necessary, and why the temperance reformation can never be complete and triumphant except by that kind of legislation which I am advocating.

1. First, then, the State has *not* chosen to leave it to argument and moral suasion. It has chosen to *legislate on it*. It has felt that it would not be safe to leave it, as it does religion, and charity, to the conscience and the good feelings of mankind. It has felt that it would not be safe

to leave it as it does religion, to God, and to his Providence and Spirit. It *has* legislated upon it. It authorizes the *sale*. It seeks to regulate it. It attempts to derive a revenue from it—as it does *not* from damaged hides, and tainted meat, and corrupted drugs. We only ask, since the State will, and must, legislate on it, that it legislate in regard to this as it does to any other evil.

2. Secondly. You do not rely on argument and moral suasion in any similar case. Why not rely on moral suasion and appeals to the conscience in regard to lotteries? Why not continue to license them, and regulate them, and derive a revenue from them; and if, after every precaution there are still evils in regard to them, why not endeavor to check those evils by appeals to the consciences and the reason of the men engaged in selling lottery tickets? Why not pursue the same course in regard to gambling establishments, and to horse-racing and bull-baiting; and if there are still evils in regard to them, seek to persuade the men engaged in these pursuits *not* to carry them too far; and if there are young men liable to be led astray, endeavor by moral suasion to induce them *not* to do that which the law allows? And why not extend the same principle to horse stealing, and burglary, and arson, and rely on moral suasion in checking these evils? Yet, not one of these evils does an appreciable part of the mischief in our land which is done by the traffic in ardent spirits.

3. Thirdly. There is a class of men, and those most deeply interested in the matter, that you can never influence by moral suasion. There *is* a portion that you can. The conscientious you can. The men that truly fear God, you can. The men that ordinarily convene in a Christian house of worship, you can. Many young men you can. Many farmers, mechanics, professional men, you can. Many men engaged in the traffic, you can,—even when the traffic has been long continued, and is deemed respectable. I began

my ministry in a place where there were twenty stores in which ardent spirits was sold, and where there were nineteen distilleries in which it was manufactured. In my youthful ardor I made an appeal to my people as well as I was able, on the subject. I had the happiness of seeing the traffic abandoned in eighteen of those stores, and of seeing seventeen of these distilleries cease to pour out the streams of demoralization and death on the community, through the influence of moral suasion. But after all that you can do in such a case, do you not know that there is a class of men in every community that you cannot reach by moral suasion, and that must be restrained by law? They are men who enter no sanctuary; who place themselves aloof from argument; whose hearts are hard; whose consciences are seared: whose sole motive is gain; and who, if the moral part of the community abandon a business, will only drive it on themselves the faster.—What are you to do with such men? Are you to protect them in their business against the general sense of the community? Are you to throw the shield of law over them, and sanction all that they do? Are you to license them, and derive a revenue from their business? Are you to make supplementary provisions to sustain all the paupers they will make, and to pay the costs of all the prosecutions for crime that shall result from their employment? How are you to check, restrain, control, such men? Is it to be by moral suasion? All our acts of legislation answer, No. You may go far in the temperance reformation by moral suasion, but it has failed in removing the evil, and from the nature of the case, must always fail, just as any thing else would, while the State throws its protecting shield over the traffic; and while there are men, principled and unprincipled, who will take advantage of such protection, and resist your arguments, and soothe their consciences, in the plea that what they do is *legal*.

4. And fourthly, the existing legislation does not prevent the evil, nor can any legislation that proceeds on that principle prevent it. All such legislation must be ineffectual on any subject. It is a wrong principle to authorize any thing by law from which men are to be dissuaded by moral means; a wrong principle to bring the laws into conflict with those arguments which must be used to restrain men from vice and crime. I venture to affirm that all the laws ever made to prevent intemperance under the system of licensing persons to sell intoxicating drinks, always have failed, and always will and must fail. Is any man restrained from becoming intemperate by the license law? Do not men drink just as much as they choose? Are there any fewer intemperate men in any community in virtue of those laws? Is it not for the interest of men who pay a revenue to the State for a license, to sell as much of their article of traffic as they can? Are they not authorized to do it to any extent, and to all persons, and to persons in all circumstances, and is there any thing in the nature of the case, or in their contract with the State, to prevent it? Or if there is *can* you prevent it? When a travelling merchant has paid a tax to the State for the privilege of selling his wares, does he not feel authorized to prosecute his business to any extent, and does he not feel that he has paid a consideration—an equivalent—to the commonwealth for this very privilege? Are not men *authorized* to sell ardent spirits, by a tavern license, and is not this the very thing for which it was granted? And what ground of appeal have you to such men as long as they can plead the sanction of the laws of the land, and the authority of the State? Let a father approach such a man, and remind him that his business is ruining his own son. That is an affair, he would say, of the State, and he has only, in the face of such an appeal, to show his license. Let a wife come to him with tears,

and tell him of the wo and poverty and wretchedness that his business is introducing into her once happy home. He has only to exhibit his license. Let a neighbor remind him of the evils that intemperance does in a community, and entreat him for the love of God and humanity, to abandon the business. He has only to show his license. Let the ministers of religion plead, and let them set forth the awful consequences of that business on morals and religion—in time and in eternity, and he has only coolly to show his license. He is doing a business which is *legal*—as legal as the work of the farmer, the mechanic, the professional man. He throws off responsibility. He pleads the authority of the State, and shelters himself against all arguments, and all appeals, and all persuasions, under the broad shield of that protection. And I repeat, therefore, the declaration, that, considered as a restraint on intemperance, *the whole license system has failed, and must always fail*. Just as many men become intemperate as choose. No man is restrained from procuring the intoxicating cup. Intemperance in the land is under the solemn sanction of the laws.

(b) But why, if legislation is necessary and proper, should the principles laid down in this discourse lead to an entire prohibition of the traffic? I may now answer this question in a very summary way:—because society has a right to protect itself, from one of the greatest—if not the very greatest, evils ever inflicted on humanity; because society should not protect such an evil by acts of legislation, or make that *legal* which good men are seeking to remove by moral means; because society should not attempt to *regulate* an evil, but should seek to *remove* it; because society has a right to make use of all proper means to prevent or remove an evil; and because, if necessary, in doing this, it has a right to render property embarked in a particular business, worthless, or to destroy

it. On these broad principles, I advocate the propriety of endeavoring to obtain the passage of such laws as shall effectually prohibit, under proper and effective penalties, this whole traffic. I start no metaphysical and abstract question, about its being a sin *per se* to drink wine, or brandy, or any other intoxicating drink. I look at the broad fact of the evil in the land, and say that an evil so great, *ought* to be restrained; that the principles of legislation applied to other subjects *ought* to be applied to this; and that there is no other conceivable evil that *would be* protected, patronized, shielded, regulated, as this is, in a civilized and Christian land.

It was ascertained some years since, and the statistics would be more dreadful now than they were then, that thirty thousand American citizens at least, died annually from intemperance; and that more than three hundred thousand of our people were intemperate in the proper sense of the word. It was ascertained that a very large proportion of these were young men—the bone and sinew of the republic—the hope of the church, and of the State, and many of them connected with the best families of the land. It was ascertained that many of the whole number were taken from the bar, the medical profession, the pulpit—from mercantile and mechanical walks—where they might have been eminently useful. It was ascertained that they sustained all the most interesting relations of human life—as fathers, husbands, sons, and brothers. It was ascertained that the vice was usually accompanied with every other vice, and was the fruitful source of every kind of crime. It was ascertained—or there was strong reason to suspect—that among the number of the intemperate, were some thousands of females—sustaining the various relations of wife, mother, daughter, sister. It was ascertained, on the most diligent enquiries, that from three-fourths to nine-tenths of the prosecutions for crime sprang

in some way out of intemperance, and that from three-fourths to nine-tenths of all the expenses necessary to maintain the paupers in the community, sprang from the same source. It was declared by the great body of physicians, and as far as I know by all whose attention was called to the subject, that there is no *nutriment* in alcoholic drinks; that they furnish no permanent strength to the body; that they are dangerous to health, and that on the tissues of the stomach they act like a slow poison, producing ultimate disease; that among the maladies produced is one of the most frightful forms of insanity; and that the regular effect of indulgence, however hardy the frame may be, will be ultimately, death. It was proclaimed by the ministers of religion that there is no other single cause that gives occasion for so much discipline in the church; that nothing stands so much in the way of the success of the gospel which they preach; and, as the physician made a statement about *the body*, so they proclaimed that nothing does so much effectually to destroy *the soul*. These and kindred truths were proclaimed through the land; and there were none to gainsay them—for it could not be done.

The people of the city and county of Philadelphia—and the same substantially is true all over the Commonwealth and the nation—pay for the expenses of the criminal courts and for the alms-house, somewhere about three-fourths of the whole as a premium on intemperance, and as the result of the traffic in intoxicating drinks. The taxes to meet these expenses are paid by the sober, the temperate, the industrious, the pious. Our State derives a revenue of about one hundred thousand dollars annually from tavern licenses, a “penny wise and pound foolish” operation, for in the city and county of Philadelphia alone, the expenses of maintaining the poor made such by the business, and of prosecuting for the crimes produced by it,

and of preventing disorder and riot caused by it, exceed by far all the revenue derived from this source in the whole Commonwealth. This is unequal; it is wrong. It is a heavy and oppressive burden. It exists in reference to nothing else.—It is worse than the “stamp act” and the tax on “tea.” As a sober and industrious citizen, I cannot be required on any just principle to support the pauperism and crime made by the business of another; and yet there is not a licensed tavern, or an unlicensed tavern in the community—however low and vile—that does not make it necessary to tax the sober and the virtuous to meet the evils which are the regular result of its business.

The exact sum received in the city and county of Philadelphia for tavern licenses in the year 1851, was \$66,302; and the whole sum in the State was about \$108,000. The expenses for prosecuting for crime, and for the support of pauperism, consequent on intemperance, in the city and county, was, for the same year, as accurately as it can be computed, \$365,000. As showing the nature and the extent of the burdens resting on the community as the result of the license system, and the traffic in ardent spirits, it may be proper to present some statistics respecting the Philadelphia Alms-house, —an institution that may be properly regarded as furnishing a *fair* illustration of the working of the present system throughout the land. It is taken from the report of the Guardians of the Poor.—“The number of cases treated in the Hospital, in the Blockley Almshouse, in 1851, was 5,000. Intemperate, males, 2,709, women, 897, total, 3,606, out of 5,000. There were also of Mania-a-potu—with slight delirium, 343; do. with hallucination, 114; violent mania, 157:—total mania-a-potu, 614.” Nearly four thousand persons supported at the public expense, in a single city and county, as the result of the traffic in ardent spirits, and more than six hundred afflicted with the most dreadful form of insanity that ever comes upon a

man:—a business tolerated, protected, sustained by law, and requiring heavy taxes on the sober and industrious for its support! What other conceivable business is there that in a civilized and Christian land would be protected or tolerated, which would, in a single year, and every year, in a single county, dethrone the intellect in more than six hundred cases, and convert more than six hundred citizens into frightful maniacs?

Should an evil like this be protected by law; should it be assumed that it is to continue to exist; should an attempt be made merely to regulate it; should it have the patronage of the State, and be made legal; should a virtuous community consent to be taxed to sustain it; should intelligent and pious men lend their countenance to it? Shall a man be restrained from setting up a slaughter-house, or a glue manufactory, or dye-works, at my door, and allowed to open a fountain that is certainly destined to corrupt the morals, and the peace of the neighborhood; that is to multiply crime and pauperism, that will ruin the bodies and the souls of men?

We shall be told, perhaps, that this is a free country, and that the proposed law is a restraint on freedom. Free it is; but not for every thing. It is not free to sell lottery tickets, or to set up nuisances, or to counterfeit the coin, or to open houses avowedly of infamy.

We may be told that it is wrong to prevent men by law from drinking what they please. That is not the point:—it is that the State shall not authorize them to *manufacture* and *sell* what they please.

We may be told that it is impossible to carry the legislature for the passage of such a law. That will depend on the wishes of the State, for our legislators are the representatives of the people, and the people can do as they please.

We may be told that the people cannot be brought to

such a state as to demand the passage of such a law. That remains to be seen. It is not absolutely certain what would be the effect of a popular vote on the subject to-morrow, if the question were submitted to the people. Besides, it is to be assumed in this country that the people can be induced to demand the passage of any reasonable and just law, and that they can be prevailed on to send representatives that will do it. Moreover, it is supposed that there may be hundreds of intemperate men themselves who would vote for such a law—men who see the evil of their course, and their danger; men who desire to reform, but who have not strength to resist temptation, but who would feel that the brighter days of their early years would revisit them again, if the temptation were removed for ever from their reach.

We may be told that it would be impossible to execute such a law in our State, and especially in our great cities. That *may be*; but it is never to be *assumed* in this country that a law deliberately passed by the representatives of the people, and after it has been fairly before the minds of the people, cannot be executed. What law is there that has not been executed? What law is there that cannot be? The remedy for obnoxious laws in this land is not *resistance* but *change*; and it is always to be assumed by our legislators, and by the people too, that a law *can* be executed, and that it *will* be executed, until the contrary is proved.

But it may be asked still, what if we fail; fail in getting the law; fail in its execution? I answer in the words of Lady Macbeth, “we *fail*.” So be it. We fail now. We fail in all our attempts to stop the progress of intemperance. We fail in moral suasion. We fail under the existing laws. We fail in all societies; by all appeals; by all arguments; by all methods of influencing the public mind; by all preaching and lecturing; by all parental counsel and by all the

portraying of the wide-spread evils of intemperance. In all these things we *fail*, while the law patronizes it; while the State legalizes it; while the statutes of the land authorize it—and in such efforts we must always fail—just as we would in banishing lotteries, or in closing gaming houses that are sanctioned by law. But suppose we *do* fail. The evil cannot easily be worse, and we shall have made one more effort to remove that great curse that has settled down on our land. But there is a God in heaven, and men in a righteous cause, when they put their trust in him, *do not ultimately fail*.

THE END.

FATHER CLEMENT.

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